

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL WRIT PETITION NO. 2961 OF 2004
CIVIL APPLICATION WITH NO. 1867 OF 2006
AND
CIVIL APPLICATION NO.2010 OF 2006

M/s. Sagar Earthmovers Pvt. Ltd.

..Petitioner

Vs.

Shri
ors.

Shahu

Co-op.

Bank

Ltd.

and

..Respondents

Mr. A.S. Desai for petitioner.
Mr. A.M. Kulkarni h/f Mr. A.A. Kumbhakoni for
respondent nos.1 and 2.
Ms. V. Mhaispurkar, AGP for respondent nos.3,4 and 8.
Mr. G.S. Godbole for respondent no.5.
Mr. P.D. Dalvi for respondent no.6.
Mr. Vinod Jadhav for respondent no.7.

CORAM: B.H. MARLAPALLE, J.

Date : August 14, 2006.

P.C.:

1. During the pendency of this petition the
petitioner and the three respondents-banks continued
their efforts to settle the disputes regarding the
disposal of the goods, which are already in the
custody of the Court Commissioner i.e. Mr. Nitin
Badkar, Advocate and more so when claims and counter
claims were made by filing Civil Applications
regarding the said goods. It was known to the parties
that if the goods are not disposed in time their

utility would be diminished and ultimately most of these goods will have to be sold as scrap. The Court Commissioner placed his interim report on record and had prepared different lists of these goods. In all there are eight lists, in addition there is a preliminary list. The goods are lying in the godowns for which the monthly rental amount is being paid and the sharing of this rental charges is a matter which will have to be decided by the Co-operative Court.

2. So far as the disposal of the goods is concerned, the parties have placed before me the Minutes of Order duly signed by all the learned counsel and also the parties and they are present before me. The said Minutes of Order is taken on record and marked as "X" for identification. The learned counsel further pray for disposal of the petition in terms of the Minutes of Order and it is hereby ordered accordingly.

3. So far as the issue regarding the professional fees of the Court Commissioner is concerned, it is pointed out that he has already worked for about 90 days (3 months) and almost on full time basis (at

least eight hours per day) and he will have to spend some more time till the goods are disposed. The Court Commissioner is a practioner before the Co-operative Court at Kolhapur and he had to scarify his professional work on account of the assignment given to him by the Lower Appellate Court. He has discharged the responsibilities satisfactorily.

4. The Commissioner's fees is hereby fixed at Rs.17,000/- per month and he shall be paid accordingly for the work already done i.e. three months and which amount comes to Rs.51,000/-. For his future work also the Co-operative Court to direct the amount of fees payable to him at this rate.

5. In addition, the claims between the parties and as set out in Clause 4(g) of the Minutes of Order will also be adjudicated by the Co-operative Court at Kolhapur and the petitioner-company will be entitled to get its revision decided on merits on compliance of Clause 4(h) of the Minutes of Order.

6. It is further submitted by the learned counsel for the respective parties that certain expenditure

has been incurred during the Commission work as well as transportation of goods and their storage in the godowns. The total amount of expenditure so required in future and already incurred in the past will also be determined by the Co-operative Court and the expenditure incurred till now will be shared by the three banks equally, whereas the expenditure that will be required to be incurred in future will be shared by the petitioner and the three banks equally i.e. 25% each and the expenses of each Banks' Officers will not be included in this sharing. The Commissioner's fees also will be shared by all the banks and the petitioner proportionately i.e. 25% each for the past as well as for future. The Commissioner's fees shall be deposited with the Co-operative Court within four weeks from today by the respective parties and to the extent of their respective share.

7. Petition disposed off accordingly along with Civil Applications.

(B.H. Marlapalle,J.)